

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	Case No. 15 B 05527
BRIAN STEVENS	Chapter 13
Debtor,	Honorable Judge Jack B. Schmetterer
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BRIAN STEVENS	
Plaintiff	Adversary Proceeding
v.	Case No. 16 A 00116
WELLS FARGO BANK, N.A.	
Defendant.	

NOTICE OF MOTION

To: Jose G. Moreno, Esq.
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, Illinois 60527

John G. Stumpf, Chairman and Chief Executive Officer
Wells Fargo Bank, N.A.
420 Montgomery Street
San Francisco, California 94104

Sara Morgan, Vice President - Loan Documentation
Wells Fargo Bank, N.A.
Home Campus X2303-01A
Des Moines, Iowa 50328

Timothy J. Sloan, President
Wells Fargo Bank, N.A.
420 Montgomery Street
San Francisco, California 94104

YOU ARE HEREBY NOTIFIED THAT on Monday, July 11, 2016, at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Judge Jack B.

Schmetterer in Courtroom 682, or any Judge presiding in that courtroom in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, and shall then and there present Plaintiff's **Motion for Order of Default Judgment**, a copy of which is hereby served upon you.

Dated: June 20, 2016

/s/ Joseph S. Davidson
Joseph S. Davidson
SULAIMAN LAW GROUP, LTD.
900 Jorie Boulevard
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Oak Brook, Illinois 60523
(630) 575-8181 (telephone)
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Counsel for Plaintiff Brian Stevens

CERTIFICATE OF SERVICE

I, Joseph S. Davidson, an attorney, hereby certify that service of the foregoing Notice of Motion was made on June 20, 2016 by regular, first class United States mail, postage fully pre-paid, addressed to the person(s) listed above.

/s/ Joseph S. Davidson
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**MOTION FOR ORDER OF DEFAULT
AND ORDER OF DEFAULT JUDGMENT**

Pursuant to Fed. R. Bankr. P. 7055 and Fed. R. Civ. P. 55(b), Plaintiff, Brian Stevens, requests that this Court enter an order of default and an order of default judgment against Defendant, Wells Fargo Bank, N.A. (hereinafter "Defendant"), and in support thereof, states as follows:

1. Pursuant to Fed. R. Bankr. P. 7004(h), Complaint and Summons were served by certified mail addressed to an officer of Defendant. Complaint and Summons were mailed on April 12, 2016 and received on April 18, 2016. *See* Certificate of Service, Dkt. No. 6.
2. Pursuant to Fed. R. Bankr. P. 7012(a), Defendant shall serve an answer within 30 days after the issuance of the summons.
3. Defendant has failed to plead or otherwise defend.

4. Pursuant to Fed. R. Bankr. P. 7055 and F. R. Civ. P. 55, when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the court may enter default judgment.
5. Plaintiff is the owner of the property commonly known as 13564 West 167th Street, Homer Glen, Illinois 60491.
6. Wells Fargo Bank, N.A. possesses a senior mortgage against the property commonly known as 13564 West 167th Street, Homer Glen, Illinois 60491 in the amount of \$132,000.00 by virtue of Consent Judgment entered in Case No. 15 A 00651.
7. Wells Fargo Bank, N.A. filed proof of claim 3-1 in the amount of \$262,727.60.
8. Defendant possesses a junior mortgage against the property commonly known as 13564 West 167th Street, Homer Glen, Illinois 60491 in the amount of \$71,095.17.
9. Pursuant to 11 U.S.C. §§ 506(a) and (d), Defendant possesses a secured claim to the extent of the value of Wells Fargo Bank, N.A.'s interest in the property commonly known as 13564 West 167th Street, Homer Glen, Illinois 60491. To the extent that Defendant's junior mortgage is not an allowed secured claim, such lien is void.
10. Pursuant to 11 U.S.C. § 1322(b), a lien upon a residential real estate which is the Debtor's primary residence cannot be modified. However, where the junior mortgage is wholly unsecured, it should not be allowed as a secured claim, and that the mortgage lien may be stripped off. *In re Havel*, 2002 WL 31944059 (Bankr. S.D. Ill. 2002); *In re Mann*, 249 B.R. 831, 840 (1st Cir. BAP 2000); *In re: Pond*, 2001 252 F.3d 122 (2nd Cir. 2001); *In re MacDonald*, 205 F.3d 606 (3rd Cir. 2000); *Bartee v. Tara Colony Homeowners Assoc.*, 212 F.3d 277 (5th Cir. 2000); *In re Lam*, 211 B.R. 36 (9th Cir. BAP 1357); *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000). As of February 18, 2015, when a bankruptcy case

concerning Plaintiff was filed under Chapter 13 of the United States Bankruptcy Code, Case No. 15 B 05527, the amount due and owing on Wells Fargo Bank, N.A.'s senior mortgage exceeded the value of the property commonly known as 13564 West 167th Street, Homer Glen, Illinois 60491; therefore, Defendant's second mortgage is wholly unsecured and may be avoided and cancelled.

WHEREFORE, Plaintiff, Brian Stevens, requests the Court enter an Order of Default and an Order of Default Judgment against Defendant:

- a. Finding Defendant to be in default, pursuant to Fed. R. Bankr. P. 7055 and F. R. Civ. P. 55;
- b. Finding Defendant's junior mortgage to be wholly unsecured;
- c. Finding Defendant's junior mortgage may be avoided and cancelled;
- d. Finding Defendant's junior mortgage shall be treated as a general unsecured nonpriority claim in Plaintiff's Chapter 13 Plan.
- e. Finding that upon successful completion and entry of discharge in Plaintiff's Chapter 13 case, Defendant's junior mortgage shall be rendered null and void with no further legal effect; and
- f. Granting any other relief deemed appropriate and equitable.

Dated: June 20, 2016

Respectfully submitted,

/s/ Joseph S. Davidson
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